

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

GRETCHEN S. STUART, M.D., et al.,)
)
Plaintiffs,)
)
v.) CIVIL ACTION
)
RALPH LOOMIS, M.D., et al.,) Case No. 1:11-cv-00804
)
Defendants.)
)
)

**PLAINTIFFS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO
MODIFY THE COURT'S JULY 9, 2013 ORDER**

Plaintiffs respectfully submit this reply to the State's August 15, 2013 filing (Doc. # 151) and state:

1. As set forth in Plaintiffs' motion (Doc. # 150) to modify the Court's July 9, 2013 Order (Doc. #142), the parties have not been able to agree upon a mutually acceptable joint statement of undisputed facts, and there remains a disagreement between the parties as to whether certain facts are material and whether certain facts are disputed.
2. In its August 15 filing, the State does not appear to disagree with this assessment or to Plaintiffs' proposed resolution, which is for Plaintiffs to file a statement of facts and the State thereafter to file a response to Plaintiffs' statement. The State seeks leave, however, to file an additional brief "because it believes, based on its reading of the plaintiffs' July 29, 2013 draft Joint Submission of Undisputed Material Facts, that what the plaintiffs view as the undisputed material facts relating to the cross motions for

summary judgment in this case are really legal and factual arguments, not undisputed material facts.” (Doc. #151 at 1-2).

3. Plaintiffs do not believe that additional briefing is warranted here. Plaintiffs’ statement of facts (attached hereto as Exhibit A) lists each of the facts in separately numbered paragraphs with citations to the record. In responding to each of these facts, the State will have the opportunity in its responsive statement to indicate, paragraph by paragraph, whether it believes each fact consists of legal argument, as well as whether it believes the fact is disputed (with appropriate record citations) or is immaterial. Plaintiffs respectfully submit that such a factual statement from Plaintiffs and a response from the State is appropriate, and that additional briefing on the eve of the August 23, 2013 hearing is not warranted.

4. However, should the Court grant the State’s request to file a brief in addition to its response to Plaintiffs’ statement of undisputed material facts, Plaintiffs respectfully request the opportunity to file a short submission in response to the State’s brief.

Dated this 16th day of August, 2013.

Respectfully submitted,

/s/ Christopher Brook
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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2013, I electronically filed the foregoing Reply in Support of Motion to Modify the Court's July 9, 2013 Order with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing.

/s/ Christopher Brook

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